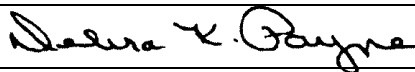
 <p style="text-align: center;"><b>POLICIES AND PROCEDURES</b></p> <p style="text-align: center;">State of Tennessee Department of Intellectual and Developmental Disabilities</p>	<b>Policy #: 10.1.2</b>	<b>Page 1 of 7</b>
	<b>Effective Date: October 22, 2013</b>	
	<b>Distribution: A</b>	
<b>Policy Type: Administrative</b>	<b>Supersedes: N/A</b>	
<b>Approved by:</b> <b>Commissioner</b> 	<b>Last Review or Revision: N/A</b>	
<b>Subject: BACKGROUND CHECKS FOR DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (DIDD) EMPLOYEES, CONTRACT WORKERS AND VOLUNTEERS</b>		

- I. **AUTHORITY:** Tennessee Code Annotated (TCA) 4-3-2708; TCA 33-1-302(a)(3); TCA 33-1-303(3); TCA 33-1-305; TCA 33-2-1201; TCA 33-2-1202; TCA 68-11-1001, *et seq.*; 42 U.S.C. 1320a-7; 42 U.S.C. 5119c(8).
- II. **PURPOSE:** The purpose of this policy is to ensure that background checks are conducted on all prospective Department of Intellectual and Developmental Disabilities (hereinafter "DIDD" or "Department") employees, contract workers and volunteers who will have direct contact with, or direct responsibility for, individuals served and that a determination is made that such persons have no history of criminal activity or abuse that could pose a safety risk to persons supported. Current or existing DIDD employees, contract workers and volunteers shall also be subject to background checks if their job duties include direct contact with, or direct responsibility for, persons supported.
- III. **APPLICATION:** This policy applies to DIDD staff, contract workers and volunteers who have direct contact with, or direct responsibility for, individuals served.
- IV. **DEFINITIONS:**
  - A. **Abuse Registry** shall mean the registry maintained by the Department of Health and containing the names of persons who have abused, neglected, exploited, or misappropriated personal property of a vulnerable person as defined in TCA 68-11-1002(6). The registry is established by TCA 68-11-1001, *et seq.*
  - B. **Background Check** shall mean the process of researching and compiling information regarding criminal records, employment or work history and references and financial records of an individual.
  - C. **Commissioner** shall mean the Commissioner of DIDD or his or her designee.
  - D. **Contract worker** shall mean a person who is contracted with the Department or employed by or subcontracted with a company which is contracted with the Department.
  - E. **Criminal Background Check** shall mean the process of researching and compiling information to determine if a person has a criminal record.
  - F. **Criminal Offense** shall mean an act or the commission of an act that is forbidden by law or the omission of a duty that is required by law and which makes the offender liable to punishment by that law.

Effective Date: October 22, 2013	Policy #: 10.1.2	Page 2 of 8
Subject: BACKGROUND CHECKS FOR DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (DIDD) EMPLOYEES, CONTRACT WORKERS AND VOLUNTEERS		

- G. **DIDD Executive Team** shall mean the group of designated executive level staff that includes the Commissioner, Deputy Commissioner of Program Operations, Deputy Commissioner of Fiscal & Administration, Assistant Commissioner of Policy & Innovation, Assistant Commissioner & General Counsel, Assistant Commissioner of Quality Management, Director of Risk Management & Licensure, Director of Human Resources and Director of Health Services.
- H. **DIDD Office of Human Resources** shall mean the office within the Department responsible for handling personnel and human resources matters.
- I. **Direct Contact With** shall mean the administration or performance of personal care duties or assistance with activities of daily living.
- J. **Direct Responsibility For** shall mean supervisory authority or responsibility for either the person served or staff providing direct care for, or having direct contact with, a person served.
- K. **Direct Support Staff** shall mean persons employed by DIDD or by an agency contracted with DIDD to provide day-to-day care and support of persons participating in DIDD services.
- L. **Employee** shall mean any person working for DIDD on a full time or part-time basis as a paid employee of the State of Tennessee. Nothing in this definition or in this policy shall be construed to confer upon a person not employed by the State of Tennessee benefits of State employment nor upon the Department or the State of Tennessee legal liability or responsibility for the acts or omissions of a non-employee.
- M. **Intermediate Care Facility for Individuals with Intellectual Disability (ICF/IID)** shall mean a licensed facility approved for Medicaid reimbursement that provides specialized services for individuals with intellectual disabilities or related conditions and that complies with current federal standards and certification requirements
- N. **Nationwide Criminal Background Check** shall mean a criminal history background check using the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.
- O. **Office of Inspector General (OIG) List of Excluded Individuals/Entities** shall mean the list of individuals and entities excluded from participation in federally funded health care programs pursuant to sections 1128 and 1156 of the Social Security Act.
- P. **Preliminary screening** shall mean an initial check to make sure an applicant's name does not appear on certain designated registries maintained by DIDD or other State or federal departments or agencies.
- Q. **Prospective employee** shall mean someone who has applied for a job but has not yet been hired.

Effective Date: October 22, 2013	Policy #: 10.1.2	Page 3 of 8
Subject: BACKGROUND CHECKS FOR DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (DIDD) EMPLOYEES, CONTRACT WORKERS AND VOLUNTEERS		

- R. **Reference Check** shall mean the act of contacting previous employers or references of an applicant to determine his or her job history, schools attended by the applicant to verify education, or other organizations or entities to confirm certifications or credentials.
  - S. **State Employment Application Form** shall mean a document used by the State to establish an applicant's qualifications for employment.
  - T. **State-licensed Private Investigation Company** shall mean an organization not affiliated with a police force that is licensed by the State of Tennessee under Title 62, Chapter 26 of the Tennessee Code.
  - U. **Substantiated Investigation Records Inquiry (SIRI)** shall mean a DIDD database containing the names of persons substantiated for abuse, neglect and/or exploitation of a person supported.
  - V. **Tennessee Bureau of Investigation (TBI)** shall mean the criminal investigative arm of the State of Tennessee.
  - W. **Tennessee Felony Offender Registry** shall mean the list of felony offenders who are or have been in the custody of the Tennessee Department of Correction or under the supervision of the Tennessee Board of Probation and Parole.
  - X. **Tennessee Sex Offender Registry** shall mean the list of sex offenders maintained by the Tennessee Bureau of Investigation.
  - Y. **Volunteer** shall mean a person who is eighteen (18) years or age or older, who provides service to the Department, or to persons served by the Department, without compensation.
- V. **POLICY:** All DIDD employees and prospective employees, contract workers and volunteers whose duties include or will include direct contact with, or direct responsibility for, persons supported by DIDD shall be subject to background checks for the purpose of confirming that they do not have a history of criminal activity or abuse, neglect or exploitation that could pose a safety risk for persons supported by the Department. Background checks shall also be used for the purpose of determining whether an applicant has the appropriate qualifications for, and is properly suited for, a position with the Department.
- VI. **PROCEDURES:**
- A. A Tennessee criminal background check shall be conducted on all prospective employees, contract workers and volunteers whose duties will include direct contact with, or direct responsibility for, persons supported. For an individual who has resided in Tennessee for less than five (5) years, a nationwide criminal background check is required.
  - B. Background checks of criminal records, prior work history, references, academic records, professional licensure and/or certifications may also be performed on current employees, contract workers and volunteers who have direct contact with, or direct responsibility for, persons supported.

<b>Effective Date: October 22, 2013</b>	<b>Policy #: 10.1.2</b>	<b>Page 4 of 8</b>
<b>Subject: BACKGROUND CHECKS FOR DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (DIDD) EMPLOYEES, CONTRACT WORKERS AND VOLUNTEERS</b>		

- C. To assist the Department in determining the qualifications and suitability of a person for employment, or retention as an employee, contract worker or volunteer, and for verification of the accuracy of information submitted in an application, resume or supporting documents, any current or prospective employee, contract worker or volunteer whose duties include direct contact with, or direct responsibility for, persons served by the Department shall:
1. Agree in a written authorization to the release and disclosure to the Department of background information and records from any reputable source, including federal, state and local governments, the Tennessee Bureau of Investigation (TBI) and any private investigation company licensed by the State of Tennessee.
  2. Submit to the following types of background checks which, for prospective employees, contract workers or volunteers, shall constitute a preliminary screening:
    - a. Tennessee Sexual Offender Registry
    - b. Department of Health Abuse Registry
    - c. Tennessee Felony Offender Registry
    - d. Office of Inspector General (OIG) List of Excluded Individuals/Entities
    - e. Substantiated Investigation Records Inquiry (SIRI)
  3. Upon request, provide a full set of fingerprints adequate for a criminal background check to be conducted by the TBI for persons working at the Central and Regional Offices, and either by the TBI or a state-licensed private investigation company for persons working at intermediate care facilities operated by DIDD.
- D. In addition to criminal background checks, checks shall be conducted of the work history and references of prospective employees, contract workers and volunteers who will have direct contact with, or direct responsibility for, persons served. Checks of academic and professional credentials or certifications shall also be conducted if deemed necessary. Any authorizations or releases necessary to conduct a reference check shall be signed by the applicant upon request.
- E. Performance of Background Checks
1. The process for obtaining or conducting background checks required or authorized by this policy shall be in accordance with all applicable EEOC rules and guidance documents and with procedures established and administered by the Department's Office of Human Resources. Results of background checks shall be maintained in an employee's official personnel file and, for contract workers or volunteers, when applicable, in a manner specified by the Director of Human Resources.
  2. The performance of background checks for contract workers shall be in conformity with any applicable terms of the agreement between the contract worker or contract agency and DIDD.
  3. The cost of any background check conducted pursuant to this policy shall be paid by DIDD.

Effective Date: October 22, 2013	Policy #: 10.1.2	Page 5 of 8
<b>Subject: BACKGROUND CHECKS FOR DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (DIDD) EMPLOYEES, CONTRACT WORKERS AND VOLUNTEERS</b>		

- F. Conducting Background Checks on Prospective Employees, Contract Workers and Volunteers.
1. Criminal Records: Criminal background checks of prospective employees, contract workers or volunteers shall be conducted prior to commencement of work. In no event shall a person have direct contact with a person supported unless and until the criminal background check has been conducted and results returned. Current employees, contract workers and volunteers whose position does not entail direct contact with, or direct responsibility for, a person served shall have a criminal background check conducted within ten (10) days of a change of responsibilities or position that includes direct contact with, or direct responsibility for, persons supported.
  2. Prior Work Records: All prospective employees, contract workers and, to the extent information is available, all prospective volunteers whose position will entail direct contact with, or direct responsibility for, a person served, shall provide a past work history containing a continuous description of activities over the past five (5) years.
  3. Reference checks: Reference checks shall be conducted for all prospective employees, contract workers and volunteers whose duties will entail direct contact with, or direct responsibility for, a person served prior to commencement of work. Each prospective employee, contract worker or, if requested, each volunteer shall identify at least three (3) individuals as personal references, one of whom shall have known the applicant for at least five (5) years. The person(s) conducting the reference check shall communicate personally with at least two (2) of the personal references identified by the applicant.
  4. Academic Records: Proof of education or specific training, as required by the position, shall be obtained for each prospective employee, contract worker or, if requested, each volunteer whose position will entail direct contact with, or direct responsibility for, a person served prior to employment or service.
  5. Professional Licensure and/or Certifications: For job classifications or job functions that require a valid license or certification to perform the responsibilities of the job, confirmation of valid licensure or certification shall be obtained for each prospective employee, contract worker or volunteer whose position will entail direct contact with, or direct responsibility for, a person served prior to commencement of work. A search shall be conducted for any record of adverse action that may have occurred relative to the licensure or certification. The applicant shall also report any pending investigation or review that has the potential for adverse action(s) against his or her license or certification.
- G. Review of Findings from Background Checks
1. If information provided to the Department on the employment application, resume, curriculum vitae, reference list or other documents submitted in support of the application is determined to be false or materially misleading, that applicant shall not be considered for employment or, if employed, shall be dismissed from service and disqualified from future employment.

<b>Effective Date: October 22, 2013</b>	<b>Policy #: 10.1.2</b>	<b>Page 6 of 8</b>
<b>Subject: BACKGROUND CHECKS FOR DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (DIDD) EMPLOYEES, CONTRACT WORKERS AND VOLUNTEERS</b>		

2. If there is no false information provided by the individual, but report(s) from the background check(s) contain information that is questionable or causes concern on the part of the supervisor, then the following additional procedures shall apply:
  - a. Criminal Records
    - i. A record or report of any charge, arrest, indictment or conviction shall be reviewed and/or investigated by the supervisor and/or hiring manager, in consultation with the Office of Human Resources. If an otherwise viable candidate has an offense in his or her history that raises concern about the potential risk of harm to a person supported or the ability of the person to fulfill the responsibilities of the position, the person shall be given the opportunity to provide a written explanation as to why the offense should not disqualify the person from working for DIDD. If the determination is made by the supervisor and/or hiring manager, in consultation with the Office of Human Resources, that any of these risks are present, an applicant shall not be accepted to work for the Department. Disciplinary action, up to and including termination, may be deemed appropriate for a current employee, and separation from service may be deemed appropriate for a current contract worker or volunteer.
    - ii. If the determination is made by the supervisor and/or hiring manager, in consultation with the Office of Human Resources, that a candidate is acceptable notwithstanding the history, a committee appointed by the Commissioner shall review the questionable criminal background information and make recommendations to the Commissioner regarding actions, if any, that should be taken under the circumstances. If the person's job is, or will be, at a developmental center or community home, the committee shall include the Chief Officer, the Department's Director of Human Resources and General Counsel or designee. If the person's job is, or will be, at the Central Office or a Regional Office, the committee shall consist of the Department's executive leadership team.
  - b. Prior Work Records and References: Adverse information received as a result of a background check of a person's prior work history and/or work references shall be assessed to determine if there is potential risk of harm to a person supported or concern about the ability of the person to fulfill the responsibilities of the position. If so, the applicant shall not be accepted to work for the Department. If the determination is made that any of these risks are present, disciplinary action, up to and including termination, may be deemed appropriate for a current employee, and separation from service may be deemed appropriate for a contract worker or volunteer.

<b>Effective Date: October 22, 2013</b>	<b>Policy #: 10.1.2</b>	<b>Page 7 of 8</b>
<b>Subject: BACKGROUND CHECKS FOR DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (DIDD) EMPLOYEES, CONTRACT WORKERS AND VOLUNTEERS</b>		

- c. Academic and Training Records: Incomplete or deficient academic credentials, training or certification requirements for a DIDD employee, contract worker or, if applicable, a volunteer, require an examination by the Department's Office of Human Resources. If it is determined that the person's credentials, certifications or training are deficient, then the job applicant shall not be accepted to work for the Department. If this determination is made after employment begins, disciplinary action, up to and including termination, may be deemed appropriate for a current employee, and separation from service may be deemed appropriate for a contract worker or volunteer.
  - d. Professional Licensure and/or Certification: Information that a prospective or current employee contract worker or volunteer does not hold a valid license or certification as required for the job class or function, has misrepresented that he or she holds such a license or certification or has a record of adverse action relating to the license or certification requires an immediate investigation. If it is determined that an applicant does not hold a valid license or certification as required for the position, then he or she shall not be accepted to work for the Department. If it is determined that the person has a record of adverse action relating to the license or certification, a review of the circumstances shall be conducted to determine whether an offer of employment is appropriate. If this determination is made after work begins, disciplinary action, up to and including termination, may be deemed appropriate for a current employee, and separation from service may be deemed appropriate for a contract worker or volunteer.
- H. Criminal Charges Brought Against Current Employees, Contract Workers or Volunteers
  - 1. Any current DIDD employee, contract worker or volunteer who is arrested, charged, indicted or convicted of a criminal offense, whether a misdemeanor or felony, but excluding routine traffic offenses, shall report this information to his or her direct supervisor within twenty-four (24) hours of the event. If the direct supervisor is unavailable, the report shall be made to the next supervisor in the person's chain of command. If reporting cannot be done on a weekend or holiday, the event shall be reported on the next work day.
  - 2. It is the responsibility of the supervisor or manager to report this information to the Department's Director of Human Resources and to the Office of General Counsel.
  - 3. After obtaining all available information, including any reports or other documentation, the supervisor, in consultation with the Director of Human Resources or designee and the General Counsel or designee, may recommend to the DIDD executive team any disciplinary action deemed appropriate under the circumstances for the employee, a contract worker or volunteer.
  - 4. An employee may be disciplined, up to and including termination, and a contract worker or volunteer may be dismissed from service, even though a conviction of a criminal offense has not occurred.

Effective Date: October 22, 2013	Policy #: 10.1.2	Page 8 of 8
Subject: BACKGROUND CHECKS FOR DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (DIDD) EMPLOYEES, CONTRACT WORKERS AND VOLUNTEERS		

5. Concealment of an arrest, charge, indictment and/or conviction of a criminal offense is grounds for disciplinary action, up to and including termination, of an employee and dismissal of a contract worker or volunteer.

VII. **CQL STANDARD(S):** None

VIII. **REVISION HISTORY:** N/A

IX. **TENNCARE APPROVAL:** N/A

X. **ATTACHMENTS:**

- A. Authorization For Release of Information